

1 BILL NO. S-82-10-09

2 SPECIAL ORDINANCE NO. S-

191-82

3 AN ORDINANCE approving a Contract
4 between the City of Fort Wayne and
5 Edgewood Utilities, Inc., for the
6 sale of assets to the City of Fort
7 Wayne, in connection with the Board
8 of Public Works.

9 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF
10 FORT WAYNE, INDIANA:

11 SECTION 1. That a certain Contract dated September
12 15, 1982, between the City of Fort Wayne, by and through its
13 Mayor and the Board of Public Works and Edgewood Utilities, Inc.,
14 for:

15 the sale, transfer, assignment and delivery
16 to the City on the closing date, the lines,
17 conduits, pipes, equipment, easements, appur-
18 tenances, fixtures, mains, machinery, hydrants,
19 meters, or other property constituting, or used
20 in, the sewer and water distribution systems in
21 the Service Area, and including a Certificate
22 of Territorial Authority from the Public Service
23 Commission of Indiana authorizing Edgewood
24 Utilities to render sewage service within the
25 service area and referred to as the "purchased
26 assets", all in compliance with EPA requirements;

27 involving a minimum total cost of Ninety Thousand and No/100
28 Dollars (\$90,000.00), payable as provided in said Contract, all
29 as more particularly set forth in said Contract, which is on
30 file in the Office of the Board of Public Works and is by refer-
31 ence incorporated herein, made a part hereof, and is hereby in
32 all things ratified, confirmed and approved. Two copies of said
Contract are on file in the Office of the City Clerk and made
available for public inspection, according to law.

SECTION 2. That this Ordinance shall be in full force
and effect from and after its passage and any and all necessary
approval by the Mayor.

31 
32 Councilmember

1 Page Two

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3 APPROVED AS TO FORM
4 AND LEGALITY

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6 Bruce O. Boxberger, City Attorney

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Read the first time in full and on motion by Burns, seconded by Stier, and duly adopted, read the second time by title and referred to the Committee City Utilities (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19____, at _____ o'clock _____.M., E.S.T.

DATE: 10-12-82

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Read the third time in full and on motion by Burns, seconded by Stier, and duly adopted, placed on its passage. PASSED (~~LOST~~) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>9</u>	<u>0</u>	_____	_____	_____
<u>BRADBURY</u>	<u>X</u>	_____	_____	_____	_____
<u>BURNS</u>	<u>X</u>	_____	_____	_____	_____
<u>EISBART</u>	<u>X</u>	_____	_____	_____	_____
<u>GIAQUINTA</u>	<u>X</u>	_____	_____	_____	_____
<u>SCHMIDT</u>	<u>X</u>	_____	_____	_____	_____
<u>SCHOMBURG</u>	<u>X</u>	_____	_____	_____	_____
<u>SCRUGGS</u>	<u>X</u>	_____	_____	_____	_____
<u>STIER</u>	<u>X</u>	_____	_____	_____	_____
<u>TALARICO</u>	<u>X</u>	_____	_____	_____	_____

DATE: 10-26-82

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL)

(APPROPRIATION) ORDINANCE (RESOLUTION) NO. S-191-82
on the 26th day of October, 1982.

ATTEST:

(SEAL)

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Samuel J. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 27th day of October, 1982, at the hour of 11:30 o'clock A.M., E.S.T.

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 29th day of October, 1982, at the hour of 11 o'clock A.M., E.S.T.

Win Moses, Jr.
WIN MOSES, JR. - MAYOR

BILL NO. S-82-10-09

REPORT OF THE COMMITTEE ON CITY UTILITIES

WE, YOUR COMMITTEE ON City Utilities TO WHOM WAS REFERRED AN
ORDINANCE approving a Contract between the City of Fort Wayne and
Edgewood Utilities, Inc., for the sale of assets to the
City of Fort Wayne, in connection with the Board of Public
Works

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT
BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE PASS.

PAUL M. BURNS - CHAIRMAN

MARK E. GIAQUINTA - VICE CHAIRMAN

JAMES S. STIER

JANET G. BRADBURY

ROY J. SCHOMBURG

10-26-82
CONCURRED IN

DATE

CHARLES W. WESTERMAN, CITY CLERK

CONTRACT FOR SALE OF ASSETS

THIS AGREEMENT, made and entered into this 15 day of September, 1982, by and between the CITY OF FORT WAYNE, Allen County, Indiana, a municipal corporation, ("CITY"), and EDGEWOOD UTILITIES, INC., an Indiana corporation, ("UTILITY").

WITNESSETH:

WHEREAS, UTILITY is the owner and operator of a privately-owned utility providing both water and sewage service to customers in an area of Allen County, Indiana, delineated on Exhibit "A" attached hereto, made a part hereof, and hereinafter referred to as the "Service Area"; and

WHEREAS, UTILITY desires to sell, and CITY desires to purchase, the water and sewage distribution system of UTILITY serving the Service Area, excepting however, the property and assets excluded as hereinafter set forth; and

WHEREAS, contemporaneously with the execution of this Agreement, UTILITY will be requesting CITY to supply water to UTILITY for use by UTILITY'S customers in the Service Area and to accept for treatment sewage collected by UTILITY in the Service Area.

NOW, THEREFORE, CITY and UTILITY agree as follows:

1. Sale of Assets. Subject to payment as hereinafter provided, CITY agrees to purchase from UTILITY, and UTILITY agrees to sell, transfer, assign, and deliver to CITY on the Closing Date (as hereinafter defined) the lines, conduits, pipes, equipment, easements, appurtenances, fixtures, mains, machinery, hydrants, meters, or other property constituting, or used in, the sewer and water distribution systems in the Service Area, and including a Certificate of Territorial Authority ("CTA") from the Public Service Commission of Indiana ("PSCI") authorizing UTILITY to render sewage service within the Service Area (attached hereto as Exhibit "B-1"), and hereinafter collectively referred to as the "Purchased Assets".
2. Property Excluded. CITY is not purchasing the sewage treatment plant, nor the wells and water pumps of UTILITY, nor the real estate where said sewage treatment plant, wells and pumps are situated, and UTILITY hereby retains all rights in and to the same, and all salvage and other rights thereto.
3. Purchase Price. As the purchase price for the Purchased Assets, CITY agrees to pay to UTILITY, a minimum of Ninety Thousand Dollars (\$90,000.00), payable as hereinafter provided.
4. Payment of Purchase Price. As hereinafter set forth in Paragraph 5, CITY will be supplying water and sewage service to UTILITY, and payment of the purchase price to UTILITY shall be as a credit against the charges for said services provided by CITY to UTILITY. CITY shall render its customary statement for said water and sewage service to UTILITY monthly, and the charges set forth thereon shall be applied as a credit against the purchase price. The credits against the purchase price shall continue for a period of 42 months from the "Date of Interconnection" (as herein defined); provided however, if the total credits do not total \$90,000.00 at the expiration of said 42 months, then the period shall be extended until said sum of \$90,000.00 is attained. In the event that credits totaling said sum of \$90,000 is attained prior to the expiration of 42 months from the Date of Interconnection, then the credits against the purchase price still continue until the expiration of 42 months, and the purchase price for the Purchased Assets shall be increased accordingly.

5. Water and Sewage Services to be Provided by City. UTILITY agrees to subscribe for, and CITY agrees to provide, water and sewage services to UTILITY, as hereinafter set forth:

(a) CITY agrees to provide to UTILITY an adequate supply of water meeting Indiana State Board of Health requirements, for resale to UTILITY'S present and future customers in the Service Area, at a schedule of rates and charges as set forth in Exhibit "B" attached hereto. Said water shall be provided through a meter installed by CITY.

(b) CITY agrees to accept for treatment, sewage collected from the Service Area by UTILITY and delivered to CITY, at a schedule of rates and charges attached hereto as Exhibit "C".

(c) Said schedules of rates and charges, Exhibits "B" and "C" respectively, are the only charges, assessments or fees, to be made to UTILITY by CITY for said water and sewage services, and there shall be no other or additional charges, including without limitation, surcharges, area or front footage assessments, special fees, connection fees, etc. Said rates and charges as set forth in Exhibits "B" and "C" may be increased by CITY from time to time, but only at the same time, and only in the same percentage, that all of CITY'S charges for water or sewer rates and charges are increased. In the event that CITY should plan a rate increase in either its water or sewage rates and charges, it will give UTILITY at least ninety (90) days advance notice thereof, and if UTILITY should so determine to apply for a rate increase, will agree to support UTILITY'S request with the PSCI, and if requested by UTILITY, to supply a witness for UTILITY'S PSCI rate hearing.

(d) In conjunction with the interconnection of CITY and UTILITY'S water and sewage systems, CITY shall be responsible for the installation of all valves, meters, meter pits, wells, lines and other devices which are necessary in order to make said interconnections. CITY agrees to maintain all of said installations, and to pay any pumping or other costs associated or arising in connection therewith. All such interconnections and other devices shall be and remain the sole property of CITY; provided however, CITY and UTILITY shall each have unlimited right of access to the meter pits and interconnection facilities, and CITY does hereby grant UTILITY a nonexclusive joint right of use to the meter pits and other interconnection facilities. The "Date of Interconnection" shall be the date when CITY gives UTILITY notice that all work has been done in conjunction with both said water and sewage interconnections, and that CITY is able to supply both water and sewage services to UTILITY. *And city has commenced the supply of full water and sewage services to utility N.C.*

(e) Inasmuch as UTILITY will be purchasing all of its supply of water from CITY, and transferring all of its sewage to CITY for processing, and since the public interest is such that no interruption whatsoever to either of said services can or should be permitted, in the event that any dispute should arise between UTILITY and CITY in regard to this Agreement, CITY shall under no circumstances have a right to cease or restrict its supply of water service to UTILITY, or cease or restrict accepting sewage from UTILITY, nor deny use or access to or by UTILITY to the interconnection facilities, and CITY hereby waives and relinquishes any and all such rights.

6. Operation of Utility Pending Final Closing. UTILITY shall continue to operate and maintain its water and sewage systems and its services to its customers pending a final closing of this sale of the Purchased Assets, and shall keep and retain all revenues received by it during said period of time, and shall pay all costs and expenses of operating its system, except the charges for water and sewage service to be provided by CITY as a credit against the purchase price as

hereinabove set forth. Inasmuch as CITY will be contract purchaser of the Purchased Assets from the date hereof, CITY and UTILITY agree to cooperate in regard to any tax benefits to be realized from said status. UTILITY is not, and shall not be construed to be, an agent, servant, employee, or representative of CITY. CITY agrees that it will not directly or indirectly (except through UTILITY) render water or sewage service to any customers within the Service Area during the term of this Agreement.

7. Closing Date. The closing date of the sale of the Purchased Assets shall take place at the later of: (a) within 30 days after the expiration of 42 months from the Date of Interconnection, or (b) within 30 days after such extended period of time (as set forth in Paragraph 4) until credits total an amount equal to the minimum purchase price as set forth in Paragraph 3. The closing shall take place at the City-County Building, Fort Wayne, Indiana. Upon the closing date, UTILITY shall convey the Purchased Assets to the CITY free and clear of all liens and encumbrances, (except current taxes if applicable), by duly executed Bill of Sale or Assignment, and shall transfer its CTA to CITY by assignment thereof. At or prior to closing, UTILITY will supply CITY plans and drawings of UTILITY'S water and sewage systems. The Purchased Assets shall be conveyed in their present condition, usual wear and tear excepted; City acknowledges that it has inspected the Purchased Assets, and the same are presently acceptable. Until the closing date, no title in and to the Purchased Assets shall pass to CITY. Since CITY is paying the purchase price as a credit against services provided to UTILITY during the term of this Agreement, UTILITY shall have the right, in its unlimited discretion, at any time during the Agreement to accelerate the closing date, and to give to CITY thirty (30) days notice that it intends to transfer, assign and deliver the Purchased Assets to CITY upon the date specified in said notice.

8. Risk of Loss. In the event any material portion of the Purchased Assets are destroyed or damaged prior to the closing date, the part or parts damaged or destroyed shall be replaced or repaired at UTILITY'S expense.

9. Rights of Third Parties. This Agreement shall not be construed to create any right or rights in favor of anyone other than the parties hereto.

10. Expenses. Each party shall bear its own expenses in this transaction and in the closing thereof.

11. Approvals Required. It is understood that this Agreement is subject to the approvals of the Common Council of the City of Fort Wayne and the PSCI. CITY and UTILITY shall make joint application to the PSCI for approval of this Agreement. In the event this Agreement is not approved by both the Common Council and the PSCI, either party hereto shall have the right to terminate this Agreement.

IN WITNESS WHEREOF, the parties have signed this agreement on the date first above written.

Subscribed and Sworn to before me, a Notary Public,
in and for County of ELKHART, and State of
Connecticut, this 19 day of April, 1983
Ann M. Rimby
Notary Public

ANN M. RIMBY
NOTARY PUBLIC
My Commission Expires April 1, 1985.

EDGEWOOD UTILITIES, INC.

By: Herbert Abram
PRESIDENT

By: John Bligh
SECRETARY

CITY OF FORT WAYNE, INDIANA

By: Win C. Moses, Jr.
WIN C. MOSES, JR., MAYOR

ATTEST: Charles W. Westerman
CHARLES W. WESTERMAN, CLERK

BOARD OF PUBLIC WORKS


By: Stephen Bailey
STEPHEN BAILEY, CHAIRMAN

By: Robert Anderson Staten
ROBERTA ANDERSON STATEN,
MEMBER

By: BETTY R. COLLINS, MEMBER

ATTEST: Sandra E Kennedy
SANDRA E. KENNEDY, CLERK

APPROVED AS TO FORM AND
LEGALITY:

By: 
RICHARD I. SNOUFFER,
Associate City Attorney

TITLE OF ORDINANCE Contract for Sale of Assets

DEPARTMENT REQUESTING ORDINANCE Board of Public Works

82-10-09

SYNOPSIS OF ORDINANCE The City of Fort Wayne agrees to purchase from Edgewood

Utilities and Edgewood Utilities agrees to sell, transfer, assign and deliver to the City on the closing date the lines, conduits, pipes, equipment, easements, appurtenances, fixtures, mains, machinery, hydrants, meters, or other property constituting, or used in, the sewer and water distribution systems in the Service Area, and including a Certificate of Territorial Authority from the Public Service Commission of Indiana authorizing Edgewood Utilities to render sewage service within the service area and referred to as the "purchased assets".

EFFECT OF PASSAGE comply with EPA requirements

EFFECT OF NON-PASSAGE no new water and sewer customers

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) a minimum of \$90,000.00 payable as provided for in the contract.

ASSIGNED TO COMMITTEE